

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

DENNIS DIMON

Plaintiff,

vs.

Civil Action No. 05-11073-REK

MICHAEL B. LATTI, LATTI ASSOC.,  
LATTI & ANDERSON LLP,  
METROPOLITAN LIFE INSURANCE CO.,  
KEMPER INSURANCE CO., and  
MORGAN STANLEY DW, INC.,

Defendants.

**DEFENDANT MORGAN STANLEY DW, INC.'S  
ANSWER TO COMPLAINT**

Defendant Morgan Stanley DW, Inc. ("Morgan Stanley") answers the Complaint as follows:

**INTRODUCTION**

1. Morgan Stanley denies that it breached any agreement or any fiduciary duty and also denies that it owed any duty to the plaintiff and otherwise lacks knowledge or information sufficient to answer the remaining allegations in paragraph 1 and therefore denies them.

2. The allegations in paragraph 2 are legal conclusions as to which no response is required. To the extent that a response may be deemed to be required, Morgan Stanley denies the allegations of paragraph 2.

**PARTIES**

3. Morgan Stanley lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3.

4. Morgan Stanley lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4.

5. Morgan Stanley lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5.

6. Morgan Stanley lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6.

7. Morgan Stanley lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7.

8. Morgan Stanley lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8.

9. Morgan Stanley admits the allegations of paragraph 9.

#### FACTUAL BACKGROUND

10. Morgan Stanley lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10.

11. Morgan Stanley lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11.

12. Morgan Stanley lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12.

13. Morgan Stanley lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13.

14. Morgan Stanley lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 14.

15. Morgan Stanley lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15.

16. Morgan Stanley lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16.

17. Morgan Stanley lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17.

18. Morgan Stanley lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 18 and denies them insofar as they form the basis of plaintiff's claims against Morgan Stanley.

19. Morgan Stanley lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19.

20. Morgan Stanley lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 20 and denies them insofar as they form the basis of plaintiff's claims against Morgan Stanley.

21. Morgan Stanley lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 21.

22. Morgan Stanley lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 22 and denies them insofar as they form the basis of plaintiff's claims against Morgan Stanley.

23. Morgan Stanley lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 23 and denies them insofar as they form the basis of plaintiff's claims against Morgan Stanley.

24. Morgan Stanley lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 24.

25. Morgan Stanley lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 25.

COUNT I

26. Morgan Stanley hereby repeats and incorporates by reference, as if set forth fully here, its answers to paragraphs 1 through 25 above.

27-30. The allegations in Paragraphs 27 through 30 do not apply to Morgan Stanley and, accordingly, no answer is made thereto. To the extent that any such allegations allege any claim against Morgan Stanley, they are denied.

COUNT II

31. Morgan Stanley hereby repeats and incorporates by reference, as if set forth fully here, its answers to paragraphs 1 through 30 above.

32-34. The allegations in Paragraphs 32 through 34 do not apply to Morgan Stanley and, accordingly, no answer is made thereto. To the extent that any such allegations allege any claim against Morgan Stanley, they are denied.

COUNT III

35. Morgan Stanley hereby repeats and incorporates by reference, as if set forth fully here, its answers to paragraphs 1 through 34 above.

36-38. The allegations in Paragraphs 36 through 38 do not apply to Morgan Stanley and, accordingly, no answer is made thereto. To the extent that any such allegations allege any claim against Morgan Stanley, they are denied.

COUNT IV

39. Morgan Stanley hereby repeats and incorporates by reference, as if set forth fully here, its answers to paragraphs 1 through 38 above.

40-42. The allegations in Paragraphs 40 through 42 do not apply to Morgan Stanley and, accordingly, no answer is made thereto. To the extent that any such allegations allege any claim against Morgan Stanley, they are denied.

COUNT V

43. Morgan Stanley hereby repeats and incorporates by reference, as if set forth fully here, its answers to paragraphs 1 through 42 above.

44. The allegations in Paragraphs 44 through 46 do not apply to Morgan Stanley and, accordingly, no answer is made thereto. To the extent that any such allegations allege any claim against Morgan Stanley, they are denied.

COUNT VI

43. Morgan Stanley hereby repeats and incorporates by reference, as if set forth fully here, its answers to paragraphs 1 through 44 above.

44-46. The allegations in Paragraphs 44 through 46 do not apply to Morgan Stanley and, accordingly, no answer is made thereto. To the extent that any such allegations allege any claim against Morgan Stanley, they are denied.

COUNT VII

47. Morgan Stanley hereby repeats and incorporates by reference, as if set forth fully here, its answers to paragraphs 1 through 47 above.

48-50. The allegations in Paragraphs 48 through 50 do not apply to Morgan Stanley and, accordingly, no answer is made thereto. To the extent that any such allegations allege any claim against Morgan Stanley, they are denied.

COUNT VIII

51. Morgan Stanley hereby repeats and incorporates by reference, as if set forth fully here, its answers to paragraphs 1 through 50 above.

52-54. The allegations in Paragraphs 52 through 54 do not apply to Morgan Stanley and, accordingly, no answer is made thereto. To the extent that any such allegations allege any claim against Morgan Stanley, they are denied.

COUNT IX

55. Morgan Stanley hereby repeats and incorporates by reference, as if set forth fully here, its answers to paragraphs 1 through 54 above.

56-58. The allegations in Paragraphs 56 through 58 do not apply to Morgan Stanley and, accordingly, no answer is made thereto. To the extent that any such allegations allege any claim against Morgan Stanley, they are denied..

COUNT X

59. Morgan Stanley hereby repeats and incorporates by reference, as if set forth fully here, its answers to paragraphs 1 through 58 above.

60-62. The allegations in Paragraphs 60 through 62 do not apply to Morgan Stanley and, accordingly, no answer is made thereto. To the extent that any such allegations allege any claim against Morgan Stanley, they are denied.

COUNT XI

63. Morgan Stanley hereby repeats and incorporates by reference, as if set forth fully here, its answers to paragraphs 1 through 62 above.

64-66. The allegations in Paragraphs 64 through 66 do not apply to Morgan Stanley and, accordingly, no answer is made thereto. To the extent that any such allegations allege any claim against Morgan Stanley, they are denied.

COUNT XII

67. Morgan Stanley hereby repeats and incorporates by reference, as if set forth fully here, its answers to paragraphs 1 through 66 above.

68-70. The allegations in Paragraphs 68 through 70 do not apply to Morgan Stanley and, accordingly, no answer is made thereto. To the extent that any such allegations allege any claim against Morgan Stanley, they are denied.

COUNT XIII

71. Morgan Stanley hereby repeats and incorporates by reference, as if set forth fully here, its answers to paragraphs 1 through 70 above.

72-74. The allegations in Paragraphs 72 through 74 do not apply to Morgan Stanley and, accordingly, no answer is made thereto. To the extent that any such allegations allege any claim against Morgan Stanley, they are denied.

COUNT XIV

79. Morgan Stanley hereby repeats and incorporates by reference, as if set forth fully here, its answers to paragraphs 1 through 78 above.

80. Morgan Stanley denies the allegations in paragraph 80.

81. Morgan Stanley denies the allegations in paragraph 81.

82. Morgan Stanley denies the allegations in paragraph 82.

COUNT XV

83. Morgan Stanley hereby repeats and incorporates by reference, as if set forth fully here, its answers to paragraphs 1 through 82 above.

84. The allegations in paragraph 84 are legal conclusions as to which no response is required. To the extent that a response may be deemed to be required, Morgan Stanley denies the allegations of paragraph 84 insofar as they suggest that plaintiff was Morgan Stanley's client, that Morgan Stanley owed any duty to the plaintiff, or that Morgan Stanley breached whatever duty it owed in connection with the annuity that is the subject of this action.

85. Morgan Stanley denies the allegations in paragraph 83.

86. Morgan Stanley denies the allegations in paragraph 84.

**Affirmative Defenses**

First Affirmative Defense

Plaintiff's Complaint fails to state a claim against Morgan Stanley upon which relief can be granted.

Second Affirmative Defense

Plaintiff's claims against Morgan Stanley are barred by the statute of limitations.

Third Affirmative Defense

Plaintiff's claims against Morgan Stanley are barred because Plaintiff's damages, if any, were caused by persons or entities for whom Morgan Stanley is not legally responsible.

Fourth Affirmative Defense

Plaintiff's claims against Morgan Stanley are barred by estoppel.



Fifth Affirmative Defense

Plaintiff's claims against Morgan Stanley are barred by ratification.

Sixth Affirmative Defense

Plaintiff's claims against Morgan Stanley are barred by contributory negligence.

Seventh Affirmative Defense

Plaintiff's claims against Morgan Stanley are barred because he has suffered no damages.

MORGAN STANLEY DW, INC.

By its attorneys,

/s/ Andrea C. Kramer

Sandra Sue McQuay, BBO# 340120

smcquay@swmlawyers.com

Andrea C. Kramer, BBO# 632584

akramer@swmlawyers.com

Sullivan Weinstein & McQuay, P.C.

Two Park Plaza, Suite 610

Boston, MA 02116-3902

617-348-4300

Dated: June 28, 2005